

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
PHILIP WHITNEY,

Appellant,

v.

BENTON-FRANKLIN-WALLA WALLA  
COUNTIES AIR POLLUTION  
CONTROL AUTHORITY,

Respondent.

PCHB No. 78-66

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a \$250 civil penalty, \$150 of which was suspended, for the alleged violation of respondent's regulations, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, Chris Smith and David A. Akana (presiding), at a formal hearing in Pasco, Washington on August 28, 1978.

Appellant was represented by his attorney, Michael L. Everett; respondent was represented by its attorney, Philip M. Rodriguez.

Witnesses were sworn and testified; exhibits were admitted.

1 Having heard the testimony, having examined the exhibits, and  
2 having considered the contentions of the parties, the Board makes  
3 these

4 FINDINGS OF FACT

5 I.

6 We notice respondent's Regulation 75-7.

7 Section 12-045 thereof prohibits the open burning of garbage,  
8 petroleum products, rubber products, and any substance, other than  
9 natural vegetation grown on the premises, which normally emits dense  
10 smoke or obnoxious odors.

11 Section 4-130(2) provides for a penalty of up to \$250 per day  
12 for each violation of the regulation's provisions.

13 II.

14 Appellant is the president and manager of A2W Enterprises which  
15 operates a completely fenced sanitary landfill in the Anderson Ranch  
16 area. No burning of materials is authorized at the site by appellant  
17 although fires have occurred on a few occasions in the past. While he has  
18 no routine inspection procedure of the site, appellant observes the  
19 site from time to time.

20 III.

21 On March 2, 1978, a complaint of black smoke in the vicinity of  
22 appellant's site was received by respondent. Also on March 2, at  
23 about 1:40 PM, the County health officer visited appellant's site and  
24 observed tires and garbage being burned at the unapproved landfill.

25 On March 3, 1978, respondent received another complaint of black  
26 smoke. Respondent's control officer visited appellant's site at about

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 4:00 PM and saw burning of materials in the open, including tires,  
2 at the landfill, and about 50 to 75 feet of smoke drifting in a  
3 westerly direction. Noting that no one was at the site, the inspector  
4 unsuccessfully attempted to contact appellant by telephone.

5 For the above events, appellant was issued a notice of violation  
6 for allegedly causing or allowing open burning in violation of  
7 Section 12 of Regulation II. From this notice sent by certified mail  
8 on March 6, 1978 followed a \$250 civil penalty, \$150 of which was  
9 suspended for 12 months and the remaining amount of \$100 was due.

10 IV.

11 The cause of the fire, which was noted on March 2 and continues to  
12 smolder underground at the present time, is not known. Appellant's  
13 efforts to extinguish the fire by covering it with dirt have not worked  
14 and smoke can presently be observed from time to time from the landfill.  
15 Fires at landfill sites are not an uncommon occurrence.

16 V.

17 Any Conclusion of Law which should be deemed a Finding of Fact  
18 is hereby adopted as such.

19 From these Findings the Board comes to these

20 CONCLUSIONS OF LAW

21 I.

22 By failing to take precautionary and supervisory measures to  
23 prevent fires at the landfill, the occurrence of which is not uncommon,  
24 and by failing to stop the instant fire within a reasonable time after  
25 its first occurrence, appellant has "allowed" the open burning of  
26 prohibited materials at the land site over which he has responsibility

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 and control. "Allowing" such a fire is a violation of Section 12 of  
2 respondent's Regulation 75-7. Although the notice of violation issued  
3 erroneously referred to a Regulation II, which is outdated, appellant's  
4 remedy, if he was prejudiced, was to request a continuance of the matter  
5 to ascertain the relevant regulation, which he did not do. We therefore  
6 affirm the civil penalty as assessed.

7 II.

8 Any Finding of Fact which should be deemed a Conclusion of Law  
9 is hereby adopted as such.

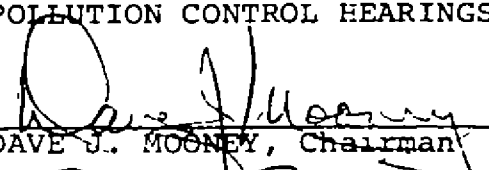
10 From these Conclusions the Board enters this

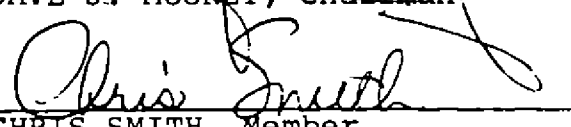
11 ORDER

12 The \$250 civil penalty, as assessed by respondent, is affirmed.

13 DATED this 7<sup>th</sup> day of September, 1978.

14 POLLUTION CONTROL HEARINGS BOARD

15   
16 DAVE J. MOONEY, Chairman

17   
18 CHRIS SMITH, Member

19   
20 DAVID A. AKANA, Member

21  
22  
23  
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26  
27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER